

TEXT OF REGULATIONS

California Code of Regulations Title 25, Division 1, Chapter 7 Proposed Amendments to Subchapter 17

Amend Section 8201 as follows:

8201. Definitions

In addition to the definitions found in 24 CFR Section 92.2, the following definitions shall apply to this subchapter. These definitions are further provided to clarify applicable provisions contained in 24 CFR Section 92.2.

- (a) "Administrative subcontractor" means any entity or individual which contracts with the State Recipient or CHDO to provide any portion of administrative services to the local HOME program activity. ~~"Administrative subcontractor" does not include licensed general labor contractors or their subcontractors acting in a general labor capacity, or consultants responsible only for preparing applications for HOME funds.~~ Individuals or groups that are acting in the capacity of developer or owner of a project shall not act as administrative subcontractor for the activity.
- (b) ~~"Allocation" means the conditional award of funds, by the department to an applicant, as evidenced by the execution of the standard agreement. Such an allocation is separate from a supplementary allocation.~~
- ~~(e)~~(b) "Applicant" is any city, county, or CHDO which submits an application to the department to operate programs or develop or rehabilitate projects using HOME funds within a specified jurisdictional boundary.
- (c) "Award letter" means a conditional reservation letter signed by the director indicating that the department has reserved funds for a project or program subject to meeting specific conditions in the regulations. ~~and in the conditional reservation letter.~~
- (d) RESERVED
- (e) "CFR" is the acronym used for the Code of Federal Regulations.

- (f) "CHDO" is the acronym for Community Housing Development Organization and means those organizations which meet the criteria set forth in 24 CFR Section 92.2 and are certified by the Department pursuant to Section ~~8204(b)~~ 8204.1.
- (g) "Conditional reservation" means the Department has reserved funds for a project or program subject to meeting specific conditions in the regulations and in the award letter.
- ~~(g) "C/MI" is the acronym for Cash and Management Information System, which is the computerized system operated by HUD which manages, disburses, collects and reports on the use of funds in the HOME fund or such other electronic or computerized system as may be used by HUD.~~
- (h) "Department" means the State of California, Department of Housing and Community Development, which shall serve as a participating jurisdiction as defined by 24 CFR Section 92.2, for the purposes of this program.
- (i) "Director" means the director of the Department.
- (j) "Family" is a household consisting of an individual or two or more persons who by blood or marriage, or otherwise, live together in a housing unit.
- (k) "Federal disbursement and information system" is the computerized system operated by HUD which manages, disburses, collects data and reports on the use of HOME funds.
- ~~(k)~~(l) "First-time homebuyer" means an individual or individuals or an individual and his or her spouse who have not owned a home during the three-year period before the purchase of a home with HOME assistance, except that the following individual or individuals may not be excluded from consideration as a first-time homebuyer under this definition:
- (1) a displaced homemaker who, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse. A displaced homemaker is an adult who has not, within the preceding two years, worked on a full-time basis as a member of the labor force for a consecutive twelve-month period and who has been unemployed or underemployed, experienced difficulty in obtaining or upgrading employment and worked primarily without remuneration to care for his or her home and family;
 - (2) a single parent who, while married, owned a home with his or her spouse or resided in a home owned by the spouse. A single parent is an individual who: 1) is unmarried or legally separated from a spouse, and 2) has custody or joint custody of one or more minor children ~~for whom the individual has custody or joint custody or is pregnant; and or~~

- (3) an individual or individuals who owns or owned, as a principal residence during the three-year period before the purchase of a home with HOME assistance, a dwelling unit whose structure is:
 - (i) not permanently affixed to a permanent foundation in accordance with local or state regulations; or
 - (ii) not in compliance with state, local, or model building codes and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.
- ~~(m)~~ (m) “First-time homebuyer program” means HOME funds are provided to a city, county or CHDO to administer a program to assist first-time homebuyers. Eligible uses of these funds consist of: 1) a city or county providing a loan to the homebuyer for acquisition and up to \$10,000 for rehabilitation of a dwelling that the homebuyer selects from the open market; provided the work is done after transfer of ownership interest; and 2) a city, county or CHDO providing assistance for the construction of scattered site dwellings, with no more than four dwellings on each vacant site ~~lot~~, and each site ~~lot~~ shall be in an existing built-out neighborhood. Such dwellings shall then be sold to first-time homebuyers.
- ~~(n)~~ (n) “First-time homebuyer ~~subdivision~~ project” means that HOME funds are used to develop a specified number of units ~~in a subdivision~~ to be sold to first-time homebuyers. By the conclusion of construction, the entire HOME investment shall be converted to mortgage assistance to the first-time homebuyers.
- ~~(o)~~ (o) “Funding cycle” means the annual period of time during which HUD makes funds available to the Department for distribution pursuant to the Act, and includes the period of time during which the Department solicits applications and makes ~~funding allocations~~ conditional reservations of funds.
- ~~(p)~~ (p) “HOME” is the abbreviation used for the Department-administered Home Investment Partnerships Program.
- ~~(q)~~ (q) “HOME fund” means the account established in the U.S. Treasury Account of the HOME Investment Trust Fund, to which funds for the Department's use in the HOME program are allocated.
- ~~(r)~~ (r) “Housing” means any structure, which is currently for residential use, or proposed for residential use, in whole or in part, including manufactured housing as defined in Health and Safety Code Section 18007.
- ~~(s)~~ (s) “Housing element in substantive compliance” means the city or county's adopted housing element is in substantive compliance as demonstrated by

a letter from the Department which sets forth findings that the housing element adopted within the time frames required by Section 65588 of the Government Code includes that substance essential to every requirement of Article 10.6, commencing with Section 65580, of Chapter 3 of Division I of Title VII of the Government Code.

~~(q)~~(t) “HUD” means the United States Department of Housing and Urban Development.

~~(r)~~(u) “Leverage” means all documented monetary and non-monetary contributions, other than HOME funds, which have been assigned a measurable value and which are applied to the specific HOME-assisted project. Leverage does not include contributions toward the cost of non-low-income units and commercial space.

~~(s)~~(v) “Local account” is an account maintained by the Department, or State Recipient, or CHDO, as may be specified in an agreement between the Department and a State Recipient or CHDO, which shall include repayments of HOME funds and matching contributions and any payment of interest or other return on the investment of HOME funds and matching contributions.

~~(t)~~ “Local Program” ~~means the activities which the State Recipient or CHDO will undertake using HOME funds as described in the Standard Agreement as described in section 8214.~~

~~(u)~~ “Major housing system” ~~means any subsystem, subassembly, or other system designed for use in, or as part of, a structure, which may include structural, electrical, mechanical, plumbing, roofing, and fire protection systems and other systems affecting health and safety. Major housing system does not include appliances or equipment, such as heaters, stoves, refrigerators, or air conditioners.~~

~~(v)~~(w) “NOFA” is the acronym used for Notice of Funding Availability. The NOFA is the document used by the Department to announce that funds are available and applications may be submitted.

~~(x)~~ “Owner-occupied housing program” means funds are provided to a city or county to administer a program to assist owners of homes that are in need of rehabilitation as defined in Section 8201(y).

~~(x)~~ “Projects to acquire rental properties, rehabilitate rental properties or acquire and rehabilitate rental properties” means funds are provided to acquire a specific rental housing project, to rehabilitate a specific project without any transfer of ownership, or to both acquire and rehabilitate a specific project.

~~(w)~~(y) “Rehabilitation” means repairs and improvements to substandard housing which are necessary to meet rehabilitation standards as defined in Section 50097 of the Health and Safety Code, to eliminate conditions specified in Section 17920.3 of the Health and Safety Code, and to meet housing quality standards as set forth in 24 CFR Section 882.109. Rehabilitation also means repairs and improvements which are necessary to meet any locally-adopted standards used in local rehabilitation programs. Rehabilitation shall include reconstruction.

~~(z)~~ ~~“Rehabilitation of owner-occupied housing program” means funds are provided to a city or county to administer a program to assist owners of homes that are in need of rehabilitation as defined in 8201(y).~~

~~(aa)~~ ~~“Rehabilitation and acquisition of rental housing program” means funds are provided to a city or county to administer a program to assist owners of multi-unit rental housing that is in need of rehabilitation as defined in 8201(y) or to assist the purchase and rehabilitation of multi-unit rental housing that is in need of rehabilitation. No one property assisted through this program shall receive more than 40 percent of the activity amount. Activities consisting solely of rental acquisition are not eligible for this activity.~~

~~(bb)~~(z) ~~“Rental housing new construction project” means funds are provided to develop a specific multifamily project on a specific site by a specific developer.~~

~~(aa)~~ ~~“Rental rehabilitation and/or acquisition program” means funds are provided to a city or county to administer a program to assist owners of multi-unit rental housing that is in need of rehabilitation as defined in 8201(y) or to assist the purchase and rehabilitation of multi-unit rental housing that is in need of rehabilitation. No one property assisted through this program shall receive more than 40 percent of the activity amount. Activities consisting solely of rental acquisition are not eligible for this activity.~~

~~(bb)~~ ~~Rental rehabilitation and/or acquisition projects” means funds are provided to acquire a specific rental housing project, to rehabilitate a specific project without any transfer of ownership, or to both acquire and rehabilitate a specific project.~~

~~(x)~~(cc) “Rural area” means the same as defined in Section 50199.21 of the Health and Safety Code.

~~(y)~~(dd) “Set up” means all of the funding conditions required by HUD and the Department have been met and the State Recipient or CHDO is ready to establish a project-specific account in ~~C/M/~~ the federal disbursement and information system.

~~(z)(ee)~~ “Setaside” means HOME funds, which are designated to be used for a specific purpose necessary to meet any statutory or regulatory requirement.

~~(aa)(ff)~~ “State recipient” means a city or county, which is designated to receive an award of HOME funds from the Department ~~for a local program or has entered into a standard agreement to administer CHDO loans on behalf of the department pursuant to section 8219.~~

~~(bb)~~ “Supplementary allocation” is the ~~amount of HOME funds the department will allocate pursuant to 24 CFR section 92.102(b)(2) to assist a jurisdiction to meet the Act's requirements and become a participating jurisdiction capable of operating a local HOME program directly through HUD.~~

(gg) “Tenant-based rental assistance program” means funds are provided to a city or county to administer a program to provide rent subsidies to eligible households. State recipients who administer a tenant-based rental assistance program are eligible only for administrative funds to reimburse expenses eligible under 24 CFR Section 92.207 of the federal HOME regulations.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 92.102(b)(2), 92.2 and 882.109; and Sections 17920.3, 18007, 50079.5, 50101, 50105, 50896 and 50896.1, Health and Safety Code.

Amend Section 8204 as follows:

8204. Eligible Applicant.

(a) In order to be eligible ~~for an allocation of~~ to apply for HOME funds, the applicant shall be ~~a unit of general local government~~ city or county, or a nonprofit corporation that has been certified as a CHDO by the Department pursuant to Section 8204.1.

(1) Cities and counties shall comply with the following:

(A) A city may only apply for funding for activities within its incorporated boundaries;

(B) A county may only apply for funding for activities within its unincorporated areas;

(C) A city or county applicant shall not have been designated as a participating jurisdiction, or included as part of an urban county, as defined in 24 CFR Section 570.3(ee), or included as part of a consortium, as defined in 24 CFR Section 92.101,

for HOME funding for the federal fiscal year for which the NOFA is issued, and

(D) A unit of general local government city or county applicant must demonstrate to the Department's satisfaction that the unit of general local government it has:

(1)(i) ~~has~~ staff available or has committed to hiring staff able to operate a local HOME program and oversee the work of an administrative subcontractor, if any, and

(2)(ii) ~~has~~ resolved any audit finding(s), for prior Department, or federally funded housing or community development projects or programs to the satisfaction of the Department or federal agency by which the finding was made,

(iii) provided a self certification that it is not debarred or suspended from participation in federal or state housing or community development projects or programs, and

(iv) provided a self certification that it is in compliance with the submittal requirements of OMB A-133, Single Audit Report.

(2) A CHDO applicant shall comply with the following:

(A) have received the Department's certification to serve the jurisdiction in which the project is located;

(B) be eligible to apply for activities located in cities and counties which have not been designated as participating jurisdictions by HUD, or included as part of an urban county, as defined in 24 CFR Section 570.3(ee), or included as part of a consortium, as defined in 24 CFR Section 92.101, for HOME funding from the federal fiscal year for which the NOFA was issued; and

(C) The CHDO must demonstrate to the Department's satisfaction that it has:

(i) ~~has~~ resolved any audit findings for prior Department or federally funded housing or community development projects or programs to the satisfaction of the Department or federal agency by which the finding was made,

- (ii) it has provided a self certification that it is not debarred or suspended from participation in federal or state housing or community development projects or programs, and
- (iii) provided a self certification that it is in compliance with the submittal requirements of OMB A-133, Single Audit Report; and
- (D) provide evidence that the CHDO fulfills at least one of the following roles:
 - (i) sole project developer;
 - (ii) sole owner; or
 - (iii) sole general partner.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code Reference: 24 CFR Sections 92.201(b)(3)(i), 92.300(b) and 92.504(a); and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

Amend Section 8204.1 as follows:

8204.1. CHDO Certification.

- (a) Applicants for CHDO certification may apply to the Department at any time.
 - (1) Within ~~10 calendar~~ 15 business days of receipt of a nonprofit corporation's application for certification as a CHDO, the Department shall provide the applicant with written notice indicating whether the application is incomplete and, if so, what specific information is required for it to be considered complete.
 - (2) Within 45 business days of receiving all of the documentation requested in subsection (b) below, the Department shall provide the applicant with either written notice of certification identifying the geographic area for which the CHDO is being certified or written notice indicating why the CHDO application is being denied.
 - (3) A survey conducted by the Department pursuant to Government Code Section 15376 of the Department's performance determined the minimum, median and maximum elapsed time between receipt of a CHDO application and reaching a final decision; the results are as follows:

Minimum:	15 calendar days
Median	30 calendar days
Maximum:	45 calendar days

- (4) Applicants that are not certified by the final filing date published in the NOFA shall not be considered eligible to apply for funding as a CHDO.
- (b) To apply for certification or recertification, an applicant shall submit, at a minimum, the following documentation to the Department:
- (1) a copy of the Internal Revenue Service exemption letter and a letter of good standing from the California Franchise Tax Board that is dated no more than 12 months prior to the date the applicant applies for certification;
 - (2) a copy of the corporation's financial statement that is dated no more than 12 months prior to the date the applicant applies for certification;
 - (3) a copy of the corporation's bylaws, which describes, at a minimum, the following:
 - (A) the governing board composition,
 - (B) the fulfillment and maintenance of the 1/3 representation requirement contained in 24 CFR Section 92.2,
 - (C) a description of the manner in which board members are selected; ~~and,~~
 - (D) evidence that the purposes of the organization comply with 24 CFR Section 92.2, and
 - ~~(E) the geographical areas served by the corporation, and evidencing compliance with section 8204(a)(2)(B), and~~
 - ~~(F)(E) relationships with to for-profit individuals or entities, if any, as they relate to the governance of the corporation.~~
 - (4) a copy of the corporation's articles of incorporation and any amendments;
 - (5) a Certificate of Status, Domestic Corporation, from the California Secretary of State that is dated no more than 12 months prior to the date of application for certification;

- (6) a description of the formal process used to solicit advice from low-income program beneficiaries in decisions regarding design, citing, development, and management of affordable housing;
- (7) a plan describing the program of tenant participation in management decisions for rental projects and the proposed fair lease and grievance procedure pursuant to 24 CFR Section 92.303;
- (8) a description of the applicant's capacity for carrying out activities with HOME funds or a plan to gain such capacity, including but not limited to
 - (A) a list of current staff members responsible for any proposed HOME activity and resumes;
 - (B) if staff does not have such capacity, a commitment to hire experienced staff or a commitment to hire an experienced consultant and a plan to train staff;
- (9) a description of the applicant's history of serving the community within which housing to be assisted with HOME funds is to be located or if the applicant has been in existence less than one year, a description of the applicant's parent organization and its history of serving the community; and
- (10) a list of the names of board members, their occupations, the names of their employers and any appointment or election to a public body, and an indication of which members fulfill the requirements of the 1/3 representation contained in 24 CFR Section 92.2-;
- (11) a copy of the corporation's business or strategic plan adopted by the Board;
 - (A) shall be submitted if any of the following applies to the organization:
 - (i) this is the first certification request with the State HOME Program,
 - (ii) there has been five years or more since the last certification has expired
 - ~~(i)(iii)~~ it has been incorporated less than 10 years,
 - ~~(iii) is applying for certification in a geographical area not represented in a previous certification, or~~

~~(iv) will be applying for an activity not previously implemented by the corporation in the State HOME Program.~~

(B) the Business plan shall cover at a minimum:

- (i) Business Description including, background, purpose and who, what, where, when and how the organizations plans to operate;
- (ii) Market Evaluation and Strategy including customers, geographical area, competition, and environment in which the organization plans to operate;
- (iii) Organizational Plan covering the corporations structure, status, staffing plan, policies and procedures for delivery of program, management controls, physical space and equipment needs;
- (iv) Financial Plan detailing projected capital budgets for equipment, construction, development projects or for loan funds; start-up and cash flow; and
- (v) Risk Analysis of potential financial, political, regulatory, unknown and crucial threats.

(12) the geographical areas served by the corporation, and evidencing compliance with Section 8204(a)(2)(B) in either the Articles of Incorporation, Resolution or Charter, or Bylaws;

(13) a geographic area map served by the applicant; evidencing compliance with Section 8204(a)(2)(B); and

(14) a self-certification that the applicant is not on the Federal List of Excluded, Debarred, or Suspended Contractors with supporting documentation.

- (c) Upon receipt of all the documents listed in subsection (b), the Department shall conduct an analysis of the documents to determine if the applicant meets the definition of a CHDO as set forth in 92 CFR Section 92.2. If the Department determines that the applicant meets the definition of a CHDO, and meets the other requirements of this Section, the Department shall issue a letter of certification to the applicant, which shall be submitted as part of any CHDO application considered for funding.
- (d) In order to demonstrate its capacity for carrying out activities assisted with HOME funds, as required by 24 CFR Section 92.2, an applicant shall meet

the requirements of paragraph (1) and either paragraph (2) or (3) below.

- (1) The applicant shall have resolved any audit findings, for prior Department, or federally-funded housing or community development projects or programs to the satisfaction of the Department or federal agency by which the finding was made.
- (2) The applicant has staff that possesses the core competencies listed herein, and has a staffing plan specifying the number of full-time staff persons and percentages of these persons' working hours which are allotted to housing projects. The required core housing development competencies are the knowledge, skills and ability to:
 - (A) Conduct market/needs analyses and conceptual project design;
 - (B) Choose and negotiate purchase of a suitable site;
 - (C) Select and work with architects and other consultants;
 - (D) Understand and comply with local planning, zoning and building requirements;
 - (E) Create a development pro forma and operating budget;
 - (F) Set rents or sales prices;
 - (G) Identify financing sources and apply for financing;
 - (H) Comply with other lender requirements;
 - (I) Deal with community concerns;
 - (J) Comply with CEQA and NEPA requirements;
 - (K) Choose and work with construction contractors;
 - (L) Manage the construction process;
 - (M) Choose and work with a management agent;
 - (N) Successfully market a project; and
 - (O) Comply with HOME program requirements, construction close-out and long-term obligations.
- (3) The applicant has an executed contract with a consultant experienced in housing development to train the applicant's staff in the core housing development competencies listed in paragraph (2) above within two years of its CHDO certification. The contract shall include a training timetable requiring the training to commence not later than six months of the date of certification or recertification and requiring the training to be completed not later than two years from the date of certification or recertification, and which shall identify the names and titles of persons being trained and the specific core competencies in which they are being trained.
- (4) A CHDO certified pursuant to paragraph (3) above shall be required to submit a status report on the progress of such training on the first and second anniversaries of its certification.

- (5) A CHDO shall only be permitted to achieve certification once pursuant to paragraph (3) above. Thereafter, all applications for recertification shall be subject to the requirements of paragraph (2).
- (e) In order to demonstrate that the applicant, or its parent, has a history of serving the community within which housing to be assisted with HOME funds is to be located, as required by 24 CFR Section 92.2, an applicant, or its parent, shall have provided a housing-related service to the community for at least one year prior to application for certification. A housing-related service is one which has provided a benefit to a tenant or homeowner in the community. Solely engaging in predevelopment activities for a housing project shall not satisfy the demonstration required by this subsection.
- (f) A nonprofit corporation created by, in alliance with, or under the control of another nonprofit corporation (hereinafter referred to respectively as the "affiliate nonprofit corporation" and the "parent nonprofit corporation"), shall be eligible to apply for CHDO certification. However, under each NOFA, only one application, as authorized by the parent nonprofit corporation, will be accepted from among a parent nonprofit corporation and any affiliate nonprofit corporations;
- ~~(g) When submitting an Application in response to the Department's NOFA process, a CHDO shall submit a self certification confirming that the organization continues to maintain compliance with all the State requirements for CHDO certification. The Department may require documentation to verify certification compliance. A CHDO shall apply to be recertified within a six month period either preceding or following the HOME award; in addition, annual certification may be required as a condition of funding at the sole discretion of the Department.~~
- ~~(g)~~h A CHDO certification shall remain in effect not more than three years from the date of the letter of certification issued by the Department provided that the CHDO continues to meet all requirements.
- ~~(h)~~i The Department shall monitor all CHDOs throughout the term of the certification to ensure continued compliance as a CHDO. If the Department determines that an organization no longer complies with the requirements of this Section, the Department may declare the organization to be ineligible to apply for State HOME funds, and the Department may revoke the organization's CHDO certification.
- ~~(i)~~j A CHDO that serves a county in which there is no other CHDO, and that has not applied for State HOME funds during any six consecutive years of certification and that has not developed, owned or sponsored housing during that six year period, shall be deemed ineligible for certification for three years from the end of the sixth year of certification. Any other CHDO that has not applied for State HOME funds during a three-year certification

period shall be deemed ineligible for certification for three years from the end of the three-year certification period, unless that CHDO has developed, owned or sponsored housing within the past three years.

- (j)k In order to be considered for certification or recertification prior to the NOFA deadline, a CHDO applicant shall submit its CHDO application no later than 60 days prior to the NOFA application deadline.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 92.201(b)(3)(i), 92.300(b) and 92.504(a); and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

Amend Section 8205 as follows:

8205. Use of Funds

- (a) Eligible activities for use of HOME funds shall be one or more used for any of the following: eligible activities described in 24 CFR section 92.205.
- (1) first-time homebuyer programs, as defined in Section 8201;
 - (2) rehabilitation of owner-occupied rehabilitation housing programs, as defined in Section 8201;
 - (3) rental rehabilitation and/or acquisition of rental housing programs, as defined in Section 8201;
 - (4) tenant-based rental assistance programs, as defined in Section 8201;
 - (5) rental housing new construction projects, as defined in Section 8201;
 - (6) rental rehabilitation and/or acquisition projects to acquire rental properties, rehabilitate rental properties or acquire and rehabilitate rental properties, as defined in Section 8201;
 - (7) first-time homebuyer subdivision projects, as defined in Section 8201.
- (b) HOME funds shall only be used to pay for eligible costs as described in 24 CFR Sections 92.206 through 92.209.
- (1) All HOME assistance shall be in the form of loans to be repaid to the local account, except for funds used for the activities listed in subsection (2). the following, which shall be provided in the form of a grant:

(A) ~~Loans to~~ financed from the CHDO's set-aside pursuant 24 CFR Section 92.300(a)(1) shall comply with the financing provisions as required for the following activities:

- (i) ~~to finance~~ for land acquisition for first-time homebuyer projects shall bear zero interest.
- (ii) Loans to first-time homebuyers shall bear a simple interest rate of 3 percent per annum, computed from the date the Deed of Trust is recorded on the property. Interest and payments shall be deferred for the term of the loan. Commencing on the 11th anniversary of the recordation date, an amount equal to 10 percent of the accrued interest shall be forgiven each year, so that on the 20th anniversary of the recordation date, all interest will have been forgiven if the borrower is in compliance with the requirements stated in the Department's loan documents.
- (iii) ~~Loans to~~ made by CHDOs for rental projects shall bear a simple interest rate of 3 percent, except for projects receiving tax credits, for which the interest rate may be either 3 percent or the long-term applicable federal rate, as defined in 26 USC Section 1274(d), and as published in the monthly revenue ruling letter published by the Internal Revenue Service. Interest shall be paid pursuant to Section 8314;

(B) ~~CHDOs approved to make~~ Loans financed from CHDO proceeds pursuant to Section 8206.1(c) shall comply with the following financing provisions as required for the following activities:

- (i) Loans assisting first-time homebuyers and homeowners whose homes are being rehabilitated shall bear simple interest rates ranging from 0 to 3 percent per annum, and interest and payments shall be deferred for the term of the loan. The CHDO may forgive some or all of the accrued interest.
- (ii) Loans made by CHDOs for rental projects shall bear a simple interest rate of 3 percent, except for projects receiving tax credits, for which the interest rate may be either 3 percent or the long-term applicable federal rate, as defined in 26 USC Section 1274(d), and as published in the monthly revenue ruling letter published by the Internal Revenue Service. All rental

rehabilitation project loans shall be amortizing unless the debt coverage ratio is less than 110 percent then the loan may be deferred according to the provisions of this Section and is exempt from Section 8310(e).

(C) Loans made by State Recipients shall comply with the financing provisions as required for the following activities:

(i) Loans assisting first-time homebuyers and homeowners whose homes are being rehabilitated shall bear simple interest rates ranging from 0 to 3 percent per annum, and interest and payments shall be deferred for the term of the loan. The State Recipient may forgive some or all of the accrued interest.

(ii) Loans made by State Recipients for rental projects shall bear simple interest rates of 3 percent, except for projects receiving tax credits, for which the interest rate may be either 3 percent or the long-term applicable federal rate, as defined in 26 USC Section 1274(d), and as published in the monthly revenue ruling letter published by the Internal Revenue Service. If a layering analysis supports a deferred loan, the State Recipient is exempt from Section 8314. All rental rehabilitation project loans shall be amortizing unless the debt coverage ratio is less than 110 percent then the loan may be deferred according to the provisions of this Section and is exempt from Section 8310(e).

(2) Funds used for the following shall be provided in the form of a grant:

- (A) funds used for tenant based rental assistance, as described in 24 CFR Section 92.209,
- (B) relocation payments,
- (C) funds necessary to provide the difference between work that is customarily performed and the minimally-required work necessary, using the least cost alternative, to comply with federal lead-based paint regulations in HOME-funded rehabilitation of owner-occupied housing or acquisition ~~and rehabilitation~~ of housing for first-time homebuyers, and
- (D) funds used for administrative costs eligible pursuant to 24 CFR Sections 92.206(d)(6), 92.206(f)(2), 92.207 and 92.208.

- ~~(2)~~(3) HOME funds may be used to pay the actual costs of administering a local program as described in 24 CFR Section 92.207. The amount of HOME funds used by a State Recipient or CHDO for administrative expenses shall be limited to the amount specified in the NOFA issued by the Department pursuant to Section 8210.
- ~~(3)~~(4) Costs must be necessary and must be consistent with the lowest reasonable cost taking into consideration a project's scope and area.
- ~~(4)~~(5) If a State Recipient or a CHDO has received a grant for administrative costs described in 24 CFR Section 92.206(d)(6) or 92.206(f)(2), the State Recipient or CHDO shall not charge, nor shall it permit its employees or contractors to charge, any fees, or otherwise seek reimbursement for those costs.
- ~~(5)~~(6) In the event that a project is not completed, or a project completion report is not submitted to the Department for the project, a State Recipient shall repay funds granted for relocation payments, lead-based paint work, and administrative costs pursuant to 24 CFR Sections 92.206(d)(6) and 92.206(f)(2), and a CHDO shall repay funds granted for relocation payments and lead-based paint work.
- (c) A CHDO may request that up to ten percent of the CHDO's project-specific funds be made available for loans pursuant to 24 CFR Section 92.301.
- (d) Pursuant to 24 CFR Section 92.208, up to five percent of the total amount of funds made available by HUD to the Department for any funding cycle may be used to pay for the operating expenses of CHDOs with which the Department has entered into standard agreements.
- (e) HOME funds shall not be used to pay for prohibited activities or costs described in 24 CFR Section 92.214.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR part 39, 24 CFR part 40, and 24 CFR Sections 92.206, 92.301, 92.353 and 92.355; 42 USC 12742; and Sections 50896 and 50896.1, Health and Safety Code.

Amend Section 8206 as follows:

8206. Matching Contributions

- (a) Except as noted in subsections (a)(1), (a)(2), and (a)(4) below, State Recipients and CHDOs shall contribute matching funds as required in subsection (b).

- (1) If the matching contribution requirements of 24 CFR Section 92.218 are waived or modified by Congress or are modified by HUD pursuant to 24 CFR Section 92.222, the Department shall waive or modify the matching contribution requirements of subsection (b) for funds affected by the federal action.
 - (2) If the Department identifies other eligible sources of match that can be used to meet part or all of the matching contribution requirements of 24 CFR Section 92.218, the Department shall modify the matching contribution requirements of subsection (b) to the extent possible for funds affected.
 - (3) Modified matching contribution requirements for each funding cycle as provided for in subsections (a)(1) and (a)(2) shall be provided in the NOFA issued by the Department pursuant to Section 8210 unless such matching requirements are waived or modified by HUD after issuance of a NOFA. In that case, the Department shall notify State Recipients and CHDOs of the modification of matching contribution requirements through written notice.
 - (4) HOME funds used for administrative and planning costs pursuant to 24 CFR Section 92.207 and CHDO operating expenses pursuant to 24 CFR Section 92.208 shall not be required to be matched.
- (b) State recipients and CHDOs shall provide matching contributions as required by 24 CFR Sections 92.218, 92.219, 92.220, and 92.221.
- (c) Documentation that the matching contribution requirements have been met shall be subject to verification by the Department.
- ~~(d) Unless otherwise requested by the State Recipient or CHDO, all repayments of HOME funds and matching contributions shall be made directly to the department for deposit into the department's local account.~~
- ~~(1) If requested by the State Recipient, the department shall allow repayments of HOME funds and matching contributions to be deposited into the State Recipient's local account.~~
 - ~~(2) If requested by a CHDO, the department shall allow repayments of HOME funds and matching assistance to be deposited into the local account of a State Recipient pursuant to section 8219.~~
- ~~(e)~~(d) If matching contributions are provided in the form of affordable housing that is not HOME-assisted pursuant to 24 CFR Section 92.219(b), the State Recipient or CHDO shall establish a procedure to monitor these projects and ensure continued compliance with the requirements contained in 24 CFR Section 92.219(b).

- ~~(f)~~(e) Contributions which shall not be considered as HOME matching contributions are those described in 24 CFR Section 92.220(b).

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.
Reference: 24 CFR Sections 92.218, 92.219, 92.220, 92.221, 92.222, 92.252 and 92.254; and Sections 50896 and 50896.1, Health and Safety Code.

Adopt Section 8206.1 as follows:

8206.1 Repayment of HOME Funds, Program Income, Proceeds from the investment of HOME funds, and Recaptured Funds

- (a) Repayment of HOME funds and matching contributions, program income, proceeds from the investment of HOME funds, and recaptured funds are subject to the requirements of 24 CFR Sections 92.252, 92.254, 92.300 and 92.503 and this Section. HOME funds invested in housing that is not completed or rental housing that does not comply with the affordability requirements for the required period shall be repaid to the Department.
- (b) Except as otherwise provided in this subsection (b), all program income and recaptured funds shall be remitted directly to the Department for deposit into the Department's local account.
- (1) If requested by the State Recipient, the Department shall allow program income and recaptured funds to be deposited into the State Recipient's local account, subject to the requirements of 24 CFR Sections 92.502(c)(3) and 92.503(a)(1).
- (2) If requested by a CHDO, the Department shall allow recaptured funds and proceeds from the investment of HOME funds to be retained by a CHDO that meets the requirements of subsection (c) of this section.
- (3) Where HOME funds are invested in housing to assist acquisition by a first-time homebuyer who sells the home unit or repays the loan prior to the end of the required affordability period, the HOME funds repaid to the CHDO or State Recipient shall be recaptured, exceptions may be requested to use resale for limited equity forms of ownership like cooperatives and community land trust.
- (4) State recipients and CHDOs that retain program income, proceeds from the investment of HOME funds, and recaptured funds shall submit quarterly reports and an annual report documenting all local account activity. Failure to submit the required reports shall result in a negative performance rating in future applications for funding.
Continued f Failure to comply with all federal and state requirements

for use of these funds shall result in a termination of the agreement for the State Recipient or CHDO to retain such funds.

(c) The Department may permit a CHDO to retain collections if it demonstrates to the satisfaction of the Department all of the following:

- (1) adherence to all program requirements and deadlines identified in Sections 8216 and 8217 in at least the last four previous preceding State HOME contracts including CHDO certification and application requirements identified in Sections 8204 and 8204.1 and federal overlays;
- (2) successful completion of at least six housing projects with a total of at least 100 units;
- (3) no unresolved monitoring findings on completed HOME projects; and
- (4) service to the community, as defined by Section 8204.1(e), of at least ten years; and
- ~~(5) at least three senior staff members have been employed by the CHDO for at least three years.~~

(d) A CHDO that meets the requirements of subsection (c) shall be subject to the requirements of 24 CFR Section 92.502(c)(3), but shall only use proceeds from the investment of HOME funds for eligible activities pursuant to 24 CFR Sections 92.205 and 92.206. A CHDO that has been permitted to retain proceeds in one HOME standard agreement shall be permitted to retain proceeds in all future contracts. If at any time a CHDO fails to demonstrate compliance with the requirements of subsection (c), the Department may require the CHDO to remit all future collections to the Department.

(e) When a CHDO applies for a rental housing development and the Department has approved the CHDO to retain proceeds in accordance with Section 8206 .1(b)(2), the rental housing development shall:

1. be underwritten by the Department in compliance with Section 8212.2;
2. comply with 24 CFR part 92 which includes project requirements specified in 24 CFR Sections 92.250, 92.251, 92.252, and 92.253; and
3. be inspected by the Department pursuant to 24 CFR Section 92.504(d)(1.)

(f) In the event of a breach or violation of Section 8206.1(e)(1) and (2) by the CHDO and the breach or violation is not cured to the satisfaction of the Department, the Department may declare a default and may seek all available legal remedies including the following:

- (1) Collect all rents and income in connection with the operation of the development;
- (2) Take possession of the development in accordance with Section 8206.1(e)(1) and (2);
- (3) Apply to any court, State or federal, for specific performance of this Agreement or for the appointment of a receiver to take over and operate the development;
- (4) Accelerate all amounts, including outstanding principal and interest due. Declare a default and initiate a foreclosure in accordance with the provisions of the HOME Deed of Trust and State law regarding foreclosures

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 92.254, 92.300, 92.502(c)(3), 92.503, and 92.503(a)(1); and Sections 50896 and 50896.1, Health and Safety Code.

Amend Section 8207 as follows:

8207. ~~Maximum~~ Amount of HOME Assistance

- (a) The ~~maximum~~ amount of HOME funds invested in a project:
- (1) shall not exceed the per unit dollar limits established by HUD under 24 CFR Section 92.250;
 - ~~(2) shall be a minimum of \$5,000 per unit, except for funds assisting a tenant-based rental assistance project; and~~
 - ~~(2)(3)~~ (3) is limited to the total amount of eligible costs ~~required~~ necessary, as determined by a subsidy layering analysis and underwriting of the project, ~~when considered with other financing and assistance~~, to accomplish the following:
 - (A) enable the project as proposed to be developed and to operate in compliance with all HOME requirements;
 - ~~(B) for rental projects, allow a debt service coverage ratio in an amount sufficient to satisfy the requirements of other lenders~~

providing financing, not to exceed the ratio specified in the NOFA; and

~~(C)~~(B) for homeownership ~~first-time homebuyer~~ projects and programs, allow ~~first-time homebuyers~~ to purchase homes with ~~utilizing other~~ loans from primary lenders. (Note: First-time homebuyers shall be required to obtain financing from primary lenders in addition to HOME financing.) Loans from primary lenders shall comply with the following requirements:

- (i) the loan must have a 30 year term, except for US Department of Agriculture Rural Housing Service 502 loans, which may have terms of 33 or 38 years;
- (ii) the loan must be fully amortizing and have a fixed interest rate that does not exceed the current market rate, as established by an index identified in the NOFA, ~~evidenced by the Effective Rate plus 50 basis points listed in the Federal Housing Finance Board's most recent Monthly Interest Rate Survey for the San Francisco District.~~ No temporary interest rate buy-downs are permitted;

(b) A recipient of a conditional reservation for a rental project shall be required to submit an updated sources and uses and an operating budget within 15 days of obtaining permanent financing commitments and at least 45 days prior to the date of anticipated construction or acquisition loan closing. The Department shall conduct a feasibility analysis and subsidy layering analysis. If the project is determined to be feasible, a final funding amount will be set based upon the subsidy layering analysis.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 92.205(c) and 92.250; and Sections 50896 and 50896.1, Health and Safety Code.

Amend Section 8208 as follows:

8208. Affordability Requirements

(a) In order to qualify under these regulations for funding as an affordable rental housing project, the project shall meet the periods of affordability specified in the following table, and shall comply with the other requirements of 24 CFR Sections 92.252, 92.255 and 92.258.

<u>Amount of HOME Assistance</u>	<u>Activity Assisted</u>	<u>Minimum Period of Affordability in Years</u>
<u>Up to Less than 15,000 per unit</u>	<u>Rehabilitation of existing rental housing</u>	<u>10 years</u>
<u>\$15,000 to \$40,000</u>	<u>Rehabilitation of existing rental housing</u>	<u>15 years</u>
<u>More than \$40,000 or more</u>	<u>Rehabilitation of existing rental housing</u>	<u>20 years</u>
<u>Any dollar amount</u>	<u>Acquisition and Rehabilitation, Acquisition and or New construction of rental housing</u>	<u>55 years</u>

(b) Homeownership units assisted with HOME funds shall meet the requirements of 24 CFR Sections 92.254, 92.255 and 92.258. Except for owner-occupied units being rehabilitated with HOME funds, all assistance shall be made available only to first-time homebuyers.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 92.252, 92.254, 92.255, 92.257, 92.258, 201.10, 203.18, 234.27, 813.102 and 888.111; Section 6932, Government Code; and Sections 50896 and 50896.1, Health and Safety Code.

Amend Section 8210 as follows:

8210. Application Process

- (a) Within a funding cycle, the Department shall issue a one or more NOFAs. Eligible applicants for funds made available by this NOFA shall be limited to:
- (1) cities and counties, which have not been designated as participating jurisdictions, or cities, which are not included as part of an urban county as defined in 24 CFR section 570.3(ee); and
 - (2) CHDOs which are proposing activities located in cities and counties, which have not been designated as participating jurisdictions by HUD, or cities, which are not included as part of an urban county as defined in 24 CFR 570.3(ee).
- (b) Eligible applicants, defined as those that comply with the provisions in Section 8204, may submit only one application in response to a NOFA.

- (c) Applications from CHDOs shall propose only activities that are eligible to qualify as CHDO set-aside activities pursuant to 24 CFR Section 92.300(a).
- (d) The NOFA shall specify, among other things, the maximum amount of funds available to a State Recipient or CHDO under the NOFA, the time frame for submittal of applications, the application requirement pursuant to Section 8211, the allocation of rating points pursuant to Section 8212, the matching contribution requirements pursuant to Section 8206, the value of voluntary labor as determined by HUD pursuant to 24 CFR Section 92.220(a)(8), the maximum debt service coverage ratio for rental projects pursuant to section 8207, any prohibitions on uses of funds, the availability of administrative funds, and the general terms and conditions of funding allocations.
- ~~(e) If funds remain unallocated through the NOFA process outlined in subsections (a) and (d) above, the department shall issue an additional NOFA in which it shall permit applications from cities and counties designated as participating jurisdictions by HUD and CHDOs proposing activities located in those cities and counties. The NOFA shall specify, among other things, which entities may apply for second round funds, the application requirements, the allocation of rating points, the matching contribution requirements, and the general terms and conditions of funding allocations.~~
- ~~(f)~~(e) Within 80 calendar days after the final filing date for applications as set forth in the NOFA(s), the Department shall provide the successful applicant applicants with written notification of the funding decision an award letter. The Department shall only consider complete applications as defined by Section 8211(b). Applications selected for funding shall be approved at allocation amounts, terms and conditions specified by the department. Failure to comply with this time frame shall not invalidate any awards conditional reservations made.
- ~~(g)~~(f) If funds are disencumbered pursuant to Sections ~~8217 and~~ 8218, made available due to an unexecuted standard agreement remaining after an award pursuant to section 8203 of this subchapter or made available by HUD pursuant to 24 CFR Section 92.451, the Department may make such funds available to (1) the next highest-ranked unfunded or partially-funded application from the most recent award of funds if the applicant can demonstrate that a proposed program activity can be successfully implemented and executed, or (2) through the next published NOFA pursuant to either subsection (a) or (e).
- (h) In order to comply with any set-aside established by HUD or the Department, or special allocation made by HUD, the Department may do one or more of the following:

- (1) issue a special NOFA;
- (2) specify in each NOFA the reservation of a portion of the funds; and
- (3) specify in each NOFA any waivers to requirements granted by HUD in connection with the funds.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 570.3(ee) and 92.451; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

Amend Section 8211 as follows:

8211. Application Requirements/Form

- (a) ~~Applications shall be made on a Form HOME-1, Home Investment Partnerships Program (HOME) Application, dated 6/2001, which is hereby incorporated by reference into these regulations. Application shall be made on a~~ This form is provided made available by the Department that requests the information required by these regulations.
- (b) An application shall be deemed complete when the Department is able to determine from the information provided whether the application is eligible for rating pursuant to the requirements of Section 8212 (a)(1), (2) and (4).
- (c) All applications shall be required to contain the following:
 - (1) identification of the applicant;
 - (2) information on the proposed activity(ies);
 - (3) information adequate to determine whether the applicant is eligible, in accordance with Sections 8204 and 8204.1;
 - (4) information adequate to determine whether the activity is eligible, in accordance with Sections 8205 and 8210(c);
 - (5) information indicating whether the applicant or any member of its program team or project team has any unresolved audit findings or has been suspended or debarred from participation in any federal or State housing or community development program;
 - (6) information on any pending litigation affecting the applicant's ability to carry out the activity;
 - (7) identification of any administrative subcontractor;

- (8) a certification that the applicant will comply with State and federal requirements;
- (9) a resolution by the governing board of the applicant authorizing the application and the execution of all required documents;
- (10) information adequate to determine the experience of the applicant with other federal or State housing or community development programs;
- (11) identification of all members of the program team or project team;
- (12) information on sources and amounts of matching contributions, in accordance with Section 8206, and sources and amounts of leverage, as defined in Section 8201.
- (d) In addition to the information required by subsection (c), applications proposing programs shall be required to contain the following:
 - (1) information on which member of the program team is responsible for accomplishing key administrative tasks;
 - (2) information on the projected administrative budget and sources of funds to pay for the costs of administering the program;
 - (3) information adequate to determine the experience of the applicant in administering a program to assist the same type of activity proposed in the application;
 - (4) a description of how the applicant proposes to use HOME funds;
 - (5) a copy of the guidelines to be used by the applicant for administering the program in compliance with State and federal requirements;
 - (6) information adequate to determine the feasibility of the program;
 - (7) selection of a milestone schedule, pursuant to Section 8217.
- (e) In addition to the information required by subsection (c), applications proposing projects shall be required to contain the following:
 - (1) a description of the roles, financial structure and all legal relationships of the applicant, developer, owner(s), managing general partner, administrative subcontractor and all other partners in the construction project;

- (2) information adequate to determine the experience of the applicant, developer, owner and managing general partner in developing the same type of subsidized project as proposed by the application;
- (3) information adequate to determine the readiness of the project to proceed;
- (4) information adequate to determine the feasibility of the proposed project, including information adequate to determine the financial feasibility of the project in accordance with Section 8212(d)(3) and the Uniform Multifamily Regulations (commencing with Section 8300); and
- (5) if applicant is a CHDO, the procedures to ensure the CHDO's effective project control of activities assisted with HOME funds pursuant to 24 CFR Section 92.300(a)(1).

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 92.1, 92.201, 92.205, 92.209, 92.214(a), 92.252, 92.254, 92.300(a)(1), and 92.500; Section 65588, Government Code; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

Amend Section 8212 as follows:

8212. Application Selection and Evaluation

- (a) Applications shall not be considered for funding unless the application is received within the time frame specified in the NOFA and demonstrates that all of the following conditions exist:
 - (1) the applicant is eligible pursuant to Section 8204;
 - (2) the applicant proposes at least one and no more than two activity activities, and The proposed uses of for the HOME funds which is are eligible pursuant to Section 8205 and 8210(c);
 - (3) the application is complete pursuant to Section 8211~~(b)~~;
 - (4) the total amount of funds requested for both administration and ~~project~~ activity-specific costs does not exceed the funding allocation limit which is stated in the NOFA and any reduction in allowed increase to this limit pursuant to Section 8217; and
 - (5) if applicant is a CHDO, includes procedures ensuring the CHDO's effective project control of activities assisted with HOME funds pursuant to 24 CFR Section 92.300(a)(1); and

(56) ~~for applications proposing site-specific projects involving acquisition of rental housing projects, acquisition and rehabilitation of rental housing projects, rehabilitation of rental housing projects, construction of rental housing projects, acquisition and rehabilitation of housing for first-time homebuyers, or construction of housing for first-time homebuyers, the application demonstrates; that the applicant, city/county administering a CHDO's project, or the developer has site control through one of the methods described in the application form.~~

(A) that the project is financially feasible;

(B) ~~that the applicant, or developer has~~ site control is obtained pursuant to Section 8303;

(C) that there are no pending lawsuits that will prevent implementation of the project, as proposed;

(67) for applications proposing rental activities, the application contains documentation demonstrating that the project either complies with or is exempt from Article 34 of the California Constitution.

(b) Each application considered for funding shall first be rated using the ~~following~~ criteria contained in this subsection and the criteria in subsection (c) for program applications and the criteria listed in subsection (d) for project applications. and Maximum possible rating points are listed after each criterion. Applications proposing programs and applications proposing projects shall be rated and ranked separately. The maximum points an application may receive shall not exceed 1000 points. Applications must receive a minimum of 650 points to be considered for assignment of additional points and for ranking. All applications shall be rated on the following:

(1) If the applicant is a city or county, the city or county's adopted housing element is in substantive compliance on the date applications are due to the Department as published in the NOFA. Newly formed cities that are not required to have an adopted housing element in compliance with general plan law shall receive full points in this category. If the applicant is a CHDO, the CHDO shall receive full points in this category. (50 points)

(2) Whether the application proposes activities within a jurisdiction whose formula allocation is being reallocated by the Department. (50 points)

- (3) Whether the application proposes activities in a rural area. (50 points)
 - (4) Whether the application addresses one or more state objectives, as identified in the Consolidated Plan or the Annual Plan of the Consolidated Plan required by HUD. (50 points)
- (c) Applications proposing programs shall be evaluated on these additional criteria:
- (1) Capability to operate a HOME program at the local level, as demonstrated by the following (300 up to 450 points)
 - (A) Performance of the applicant in prior implementation of meeting all federal and State HOME requirements specified in this Section in previous State HOME contracts (50 up to 350 points). For this criterion only, all applicants initially will be credited with 350 points. Applications will then have points deducted for performance problems under previous State HOME contracts.
 - (1) Applicants who have in the last three contracts, from prior years as defined in the NOFA, missed expenditure milestones pursuant to Section 8217 will lose up to 100 points; applicants who have committed to the fast-track milestone schedule and not complied with the deadline will lose 200 points; applicants who have not submitted required quarterly, annual, or project completion reports on time will lose up to 50 points; and
 - (2) applicants who have not complied with monitoring and contractual requirements identified by the Department in the last 5 years as defined in the NOFA will lose up to 100 points.
 - (B) Prior experience of the applicant, as measured by awards the applicant has received from implementation of HOME, CDBG and/or other local, State or federal affordable housing or community development programs during the most recent seven year period administering a program with similar administrative activities (125 up to 100 points):
 - (i) For all applicants, prior experience includes the experience of the applicant or administrative subcontractor administering a program with similar administrative activities; and

- (ii) ~~For a CHDO, prior experience includes prior experience of the CHDO as administrator or administrative subcontractor to a local jurisdiction administering a program with similar administrative activities; and~~
- (C) ~~Prior experience the individual or individuals or entities responsible for carrying out the specific activity or activities proposed in the application. (125 points)~~
- (2) Community need based on one or more of the following factors: poverty level and overpayment for housing by low-income households by tenure (i.e., owner or renter), vacancy rates for housing in the jurisdiction by tenure, age of housing stock by tenure in the jurisdiction, numbers and percentages of substandard housing units, overcrowding of housing by tenure in the jurisdiction, and percentages of households that are below poverty level and who are overcrowded and living in substandard housing by tenure, as reflected in U.S. Census data; the numbers of low-income housing units at risk of conversion to market rate and those that actually have converted to market rate; and the ratio between the median home sales price and the median household income in the jurisdiction. The NOFA will identify the community need factors that apply to each activity and required source and who will be required to provide the source documentation. (200 up to 450 points)
- (3) Feasibility of the program being applied for, as demonstrated by the degree to which the applicant's program guidelines reflect federal and State requirements, and the following: (400 up to 100 points)
 - (A) for first-time homebuyer programs, the number of units which have sold in the city or county for no more than the 203(b) limits in over the preceding 12 month period at a price which is affordable, given the proposed HOME assistance, to lower income families;
 - (B) for rehabilitation of owner-occupied housing and rental housing programs, the number of overcrowded households by tenure and the age of the housing stock by tenure in the city or county, as reflected in U.S. Census data;
 - (C) for tenant-based rental assistance programs, the overpayment by lower-income renter households as reflected in U.S. Census data.
 - (A) ~~For applications proposing programs involving acquisition of rental housing projects, acquisition and rehabilitation of rental housing projects, rehabilitation of rental housing projects,~~

~~acquisition of housing for first-time homebuyers, acquisition and rehabilitation of housing for first-time homebuyers, rehabilitation of owner-occupied housing, or tenant-based rental assistance:~~

- ~~(i) extent to which the program meets a demonstrated community need and demonstrated market for the proposed activity; and~~
- ~~(ii) extent to which the program is ready to be implemented.~~

~~(B) For applications proposing site-specific projects involving acquisition of rental housing projects, acquisition and rehabilitation of rental housing projects, rehabilitation of rental housing projects, construction of rental housing projects, acquisition and rehabilitation of housing for first-time homebuyers, or construction of housing for first-time homebuyers:~~

- ~~(i) the readiness of the project as evidenced by development milestones, including status of local government approvals, project financing commitments, and resolution of impediments to development, including the presence of toxics, pending lawsuits, relocation, and compliance with Article XXXIV; and~~
- ~~(ii) demonstration that the project will maintain fiscal integrity and affordability throughout the term of affordability as required in 24 CFR 92.252 and 92.254, including a demonstration of a local market for the project.~~

(4) Readiness to implement the program, as demonstrated by selection of the fast-track milestone schedule. (100 points) High ratio of other funds, including match, to be leveraged with HOME funds requested in the jurisdiction being served. (100 points);

(5) Applications must receive at least 875 points in subsections (b) and (c) in order to be eligible for funding.

(d) Applications proposing projects will be evaluated on these additional criteria:

(1) Capability to develop a HOME-assisted project, as demonstrated by the following: (up to 450 points)

(A) Performance of the applicant in meeting all federal and State HOME requirements specified in this section in previous State

HOME contracts; (up to 200 points). For this criterion only, all applicants initially will be credited with 200 points. Applications will then have points deducted for performance problems under previous State HOME contracts.

- (1) Applicants who have in the last 3 contracts, from prior years defined in the NOFA, missed deadlines for ~~programs~~ projects specified in Section 8217 will lose up to 200 points; ~~applicants who have or not submitted required quarterly, annual, or project completion reports on time will lose up to 50 points; and~~
- (2) applicants who have not complied with monitoring requirements identified by the Department in the last five years will lose up to 100 points.
- (B) Prior experience of the applicant, as measured by ~~awards~~ the implementation of HOME, ~~CDBG~~ and/or other local, State or federal affordable housing or community development projects during the most recent seven year period; (up to 50 points)
- (C) Prior experience during the most recent five year period of the applicant, developer, owner, and managing general partner in developing the same type of subsidized project, in a manner consistent with the applicable funding source, as is proposed in the application. (up to 200 points)
- (2) Community need based on one or more of the following factors: poverty level and overpayment for housing by low-income households and by tenure (i.e., owner or renter), vacancy rates for housing in the jurisdiction by tenure, age of housing stock by tenure in the jurisdiction, numbers and percentages of substandard housing units, overcrowding of housing by tenure in the jurisdiction, and percentages of households that are below poverty level and who are overcrowded and living in substandard housing by tenure, as reflected in U.S. Census data; the numbers of low-income housing units at risk of conversion to market rate and those that actually have converted to market rate; and the ratio between the median home sales price and the median household income in the jurisdiction. The NOFA will identify the community need factors that apply to each activity and required source and who will be required to provide the source documentation. (up to 450 points)
- (3) Feasibility of the project, as demonstrated by compliance with the Uniform Multifamily Regulations (commencing with Section 8300). ~~a per unit construction cost that is within 10 percent of the average unit construction cost in the jurisdiction as reported to the department of~~

~~Finance. Projects that have per unit construction cost in the jurisdiction will also earn points based on having the greatest number percent of assisted units. Point values for each factor will be identified in the NOFA. (up to 200 points)~~

~~(4) Readiness of the project, as demonstrated by the project development plan, status of local governmental approvals, design progress and financing commitments. Point values for each factor will be identified in the NOFA. (up to 300 points)~~

~~(5) Applications must receive at least 930 points in subsections (b) and (d) in order to be eligible for funding.~~

~~(c) Applications receiving at least 650 points under subsection (b) shall be provided additional points using the following criteria:~~

~~(1) If the applicant is a city or county, the local public entity's adopted housing element is in substantive compliance on the date applications are due to the department as published in the NOFA. Newly formed cities that are not required to have an adopted housing element in compliance with general plan law shall receive full points in this category. (200 points)~~

~~(2) If the applicant is a CHDO that proposes that a city or county administer its local program on behalf of the department pursuant to section 8219, that city's or county's adopted housing element is in substantive compliance on the date applications are due to the department as published in the NOFA. CHDO applicants that do not propose to work with a city or county to administer their project shall receive full points in this category. (200 points)~~

~~(3) Application proposes activities within a jurisdiction whose formula allocation is being reallocated by the department. (50 points)~~

~~(4) Application for activities in a rural community. (50 points)~~

~~(5) Application addressing one or more state objectives, as identified in the Consolidated Plan or the Annual Plan of the Consolidated Plan required by HUD. (50 points)~~

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR part 91, and 24 CFR Sections 92.1, 92.50, 92.102, 92.204, 92.205, 92.206, 92.218, 92.250, 92.451 and 92.453; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

Amend Section 8212.1 as follows:

8212.1. Allocation by Type of Activity and Rural Location.

- (a) HOME funds will be divided into two separate allocations, one for projects and one for programs, with the percentage of each allocation based on the actual application demand expressed as dollar amount requested each year. However, in no event shall either allocation decline below 40 percent of the total funding available for activities in any year, and if one allocation is not fully subscribed, the remaining funds can be transferred to the other allocation. Projects will compete against projects, and programs will compete against programs.
- (b) At least 50 percent of HOME funds awarded will be reserved for applicants qualifying for rural points, as stated in 8212 (e)(4)-(b)(3). However, if an insufficient number of applications that qualify for rural points are eligible for funding pursuant to ~~8212(b)~~ 8212(c)(5) and 8212(d)(5), the remaining rural funding reservation will be used to fund any non-rural applications that are eligible for funding.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Section 92.150; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

Amend Section 8213 as follows:

8213. Award Conditional Reservation of Funds

- (a) The Department will rate, rank and ~~fund~~ issue conditional reservations of funds for applications based on its review of all of the eligible activities for which funds are requested in the application. Rating scores for each of the factors set forth in Section 8212(b), (c) and (d) will be totaled by the Department. Those applications which receive the minimum required number of ~~650 points, as specified in 8212 (c) and (d), will then be assigned additional points for the factors set forth in section 8212(c), and applications will be funded~~ receive conditional reservations in the order in which they are ranked with the higher point score funded first. Those applications which are to be funded wholly from any set-aside, because all proposed activities are eligible to qualify as set-aside activities, shall be funded first based on their score. Once the set-aside has been achieved, all remaining applications will be funded based on their score relative to all other remaining applications.
- (b) In the case of a tied score, the application demonstrating the highest poverty level shall receive the higher ranking.
- (c) In the event there are insufficient funds to fund an applicant's whole

program, the applicant may be offered the amount of funds available, provided it is sufficient to complete a portion of the application which, if evaluated separately, would have been awarded funds.

- (d) Applications shall be funded subject to the availability of funds.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Section 92.150; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

Article 4. Program Operations

Amend Section 8214 as follows:

8214. Legal Documents

- (a) Standard Agreement

- (1) The written document required by 24 CFR Section 92.504 shall be a contract known as a standard agreement. The Department shall enter into a standard agreement with each State Recipient and CHDO once the State Recipient and CHDO have demonstrated compliance with the requirements in their award letter.
- (2) This standard agreement shall reserve monies from the HOME fund in an amount approved for funding by the Department pursuant to Section 8213.
- (3) The standard agreement shall require compliance with those provisions of 24 CFR part 92 which are applicable to State Recipients and CHDOs and with this subchapter.
- (4) The standard agreement shall include all the items specified in 24 CFR Section 92.504 and the following provisions:
 - (A) the granting and cancellation of ~~allocations~~ HOME funds to the State Recipient or CHDO;
 - (B) State Recipient and CHDO responsibilities for local HOME program operation, including time frames and milestones as set forth in the application;
 - (C) reporting requirements, including performance reports, pursuant to Section 8216 and the record keeping requirements as necessary to ensure compliance with 24 CFR Sections 92.508 and 92.509;

- (D) requirements related to ensuring that the HOME assistance to the project is not more than is necessary to provide affordable housing;
- (E) project set-up and fund disbursement requirements, including provision of evidence that projects are ready to be set up and provisions for receipt, use, and accounting of HOME funds pursuant to Sections 8215 and 8217;
- (F) provisions for securing loans and grants pursuant to subdivision (b);
- (G) the actions to be taken to mitigate environmental effects in accordance with the requirements set forth in 24 CFR Section 92.352;
- (H) requirements that the State Recipient or CHDO shall not discriminate or permit discrimination on the basis of race, color, religion, ancestry, sex, age, national origin, marital status, and mental or physical handicap, in accordance with state law and shall comply with the federal requirements as set forth in 24 CFR Sections 92.350 and 92.351;
- (I) requirements that prior to the issuance of a state designation number which is necessary to access ~~C/M/~~ the federal disbursement and information system, the State Recipient or CHDO shall comply with the requirements of 24 CFR Sections 92.500 and 92.502;
- (J) remedies available to the Department in the event of a violation, breach, or default of the standard agreement, including repayment of all costs of enforcement;
- (K) requirements that the State Recipient or CHDO permit the Department, HUD or their designated agents and employees the right to inspect the project or projects and all books, records, and documents maintained by the State Recipient or CHDO in connection with the local HOME program;
- (L) requirements that the State Recipient or CHDO submit audits pursuant to 24 CFR Section 92.506; and
- ~~(M) a requirement that funds shall be disencumbered if the State Recipient or CHDO has not obtained financing for the required period of affordability for a rental project within 12 months of the date of the award letter except for rental projects that~~

~~propose to utilize low-income housing tax credits, which must obtain a commitment of permanent financing within 17 months of the date of the award letter; and~~

(NM) any other terms and conditions as required by local, state, or federal law, which are necessary to ensure compliance with the requirements of the Act.

(b) Security and Regulatory Documents

- (1) Except when the State Recipient will be retaining funds in a local account, all loans shall be evidenced by a promissory note payable to the Department in the principal amount of the loan and stating terms consistent with the requirements of HOME. The promissory note shall be secured by a deed of trust naming the Department as beneficiary, or by other security acceptable to the Department. Such security shall be executed prior to the disbursement of funds.
- (2) If the State Recipient will be retaining funds in a local account, all loans shall be evidenced by a promissory note payable to the State Recipient in the principal amount of the loan. The promissory note shall be secured by a deed of trust naming the State Recipient as the beneficiary. All loans made to State Recipients by the Department for use on projects which the State Recipient owns shall be evidenced by a promissory note payable to the Department in accordance with subsection (b)(1).
- (3) The Department or State Recipient shall ensure that restrictions are recorded or imposed against the project to ensure affordability requirements pursuant to Section 8208.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR part 92; 24 CFR Sections 92.303, 92.350, 92.352, 92.500, 92.502, 92.504, 92.508 and 92.509; and Sections 35800, 50896 and 50896.1, Health and Safety Code.

Amend Section 8215 as follows:

8215. Project Set-Up and Disbursement of Funds

- (a) Upon notification from the State Recipient or CHDO that it is ready to set up each project in ~~GM~~ the federal disbursement and information system:
 - (1) The State Recipient or CHDO shall submit to the Department the project set-up report required by 24 CFR Section 92.502(b) prior to the first disbursement request.

- (2) The Department shall verify that the project is in compliance with the applicable conditions contained in the standard agreement.
 - (3) Upon verification of subsections (a)(1) and (a)(2), the Department shall set up the project with HUD in ~~G/M/~~ the federal disbursement and information system.
- (b) HOME funds shall be drawn down by electronic fund transfer from the HOME fund for a project that has been set up pursuant to subsection (a).
 - (1) The Department shall make telephonic requests for disbursement directly to ~~G/M/~~ the federal disbursement and information system after receipt of a certification of the payment request. The original certification shall remain in the permanent project file.
 - (2) The Department shall withhold disbursements in the event the State Recipient or CHDO fails to comply with the terms of the standard agreement, these regulations and/or the requirements of 24 CFR part 92.
- (c) Funds drawn from the HOME fund shall be expended for eligible costs within 15 days.
 - (1) Interest earned on HOME funds drawn from ~~G/M/~~ the federal disbursement and information system and remaining in the local account no more than 15 days shall be retained in the local account and used for eligible HOME costs.
 - (2) Unused funds, including interest earned on funds beyond the 15 days, shall be returned to the Department to be returned to ~~G/M/~~ the federal disbursement and information system.
- (d) All HOME funds in the local account shall be disbursed in accordance with 24 CFR Section 92.502(c)(3).
- (e) Within 60 days of receipt of the final drawdown request for a project, the State Recipient or CHDO shall provide to the Department the project completion report required by 24 CFR Section 92.502(e). If the State Recipient or CHDO does not comply with this requirement within the 60-day time period, the Department shall suspend further project set-ups or disbursements for the State Recipient or CHDO until a project completion report is received and accepted by ~~G/M/~~ the federal disbursement and information system.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.

Reference: 24 CFR Section 92.502; and Sections 50896 and 50896.1, Health and Safety Code.

Amend Section 8216 as follows:

8216 . Reporting and Recordkeeping

(a) Reporting Requirements

- (1) Upon execution of the standard agreement and, at a minimum, no later than 30 days after the end of each calendar quarter until the final project completion report is accepted in ~~C/M/~~ the federal disbursement and information system, State Recipients and CHDOs shall submit to the Department a performance report which shall include the following information:
 - (A) activities undertaken to implement the local program and to meet milestones contained in the standard agreement;
 - (B) anticipated activities in the next quarter to implement the local program and to meet milestones contained in the standard agreement;
 - (C) problems in implementing the program or complaints received during the reporting period and actions taken to resolve such problems and complaints;
 - (D) financial information related to expenditures of HOME funds and activity in the local account.
 - (E) any additional information which may be requested by the Department to ensure compliance with federal requirements.
- (2) State recipients, CHDOs, or other borrowers shall submit to the Department an annual performance report. The annual performance report shall cover the period from July 1 to June 30 and shall be submitted on July 1 of each year and not later than July 31 of each year pursuant to Section 8214(a)(4)(C). The report shall include information and documentation which is necessary to meet record keeping and reporting requirements pursuant to 24 CFR Section 92.508(b).

(b) Fiscal and Programmatic Requirements

- (1) State recipients and CHDOs shall maintain records as described in 24 CFR Sections 92.508(a)(2), (a)(3), (a)(5), and (a)(6). These

records shall be retained for the periods of time specified in 24 CFR Section 92.508(c). State recipients and CHDOs shall make all program records available to the Department for inspection and review and shall provide all program records to the Department upon request.

- (2) At any time during the operation of the local HOME program, the Department may perform or cause to be performed a financial audit pursuant to 24 CFR Section 92.506 of any and all phases of program operations. At the Department's request, the State Recipient or CHDO or other borrower shall provide, at its own expense, a financial audit prepared by a certified public accountant.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 92.504, 92.506, 92.508; and Sections 50896 and 50896.1, Health and Safety Code.

Amend Section 8217 as follows:

8217. ~~Set-Up Project~~ Deadlines and Expenditure Milestones

- (a) For purposes of this section, the following terms have the following meanings:
 - (1) "Contract" means the standard agreement required by section 8214. The contract shall designate each activity listed therein as either a "project" or a "program".
 - (2) "Contractor" means a CHDO or State Recipient that has executed a contract with the Department.
 - (3) "Expended" means the Department has received a valid disbursement request for the funds.
 - (4) "Fast-track milestone schedule" means an optional accelerated milestone schedule that may be chosen by a HOME applicant pursuant to Section 8212(c)(4).
 - (5) "Performance points" means those points made available pursuant to Section 8212(b)(1)(A).
 - (6) "Project" means an activity for which, at the time of application, there is an identified site and an identified borrower. No substitution of the site shall be permitted after the submission of an application to the Department.

- (7) "Program" means an activity for which, at the time of application, there is no identified site or no identified borrower.

(b) Project Deadlines

(1) All projects shall meet the following deadlines:

- (A) ~~all funds shall be disbursed if the State Recipient or CHDO shall has not obtain all necessary permanent project financing, including the permanent financing for the required period of affordability within 12 months of the date of the award letter;~~
- (B) ~~All~~ all projects shall be set up in C/M the federal disbursement and information system no later than ~~18~~ 17 months after the date of the award letter; and
- (C) all construction loan closings shall occur no later than ~~24~~ 20 months after the date of the award letter, with the exception of self-help projects, for which construction loan closings must occur no later than ~~30~~ 23 months after the date of the award letter. Construction loan closing is defined as the recordation of all construction financing loan documents, including, as applicable, the HOME deed of trust and HOME regulatory agreement;
- (D) ~~all projects must~~ shall be completed within 36 months of the date of the award letter, as evidenced by the filing of a Notice of Completion, and
- (E) ~~all expenditures must~~ shall be made within 40 months of the date of the award letter.

(2) If a project fails to meet one or more of these timeframes outlined in (1) above, the next application for a project submitted by the contractor in response to a NOFA having an application deadline after the missed project deadline/s shall receive a performance penalty pursuant to section 8212(d)(1)(A):

(3) If a project fails to meet three (3) of the timeframes outlined in (1) above: the contractor shall be:

- (A) ineligible to apply for a project in any NOFA having an application deadline following the third missed deadline until the project is completed, occupancy is obtained and all expenditures are made and all necessary HOME funds are drawn; and

(B) the next application for a project submitted by the contractor shall receive a performance penalty.

~~(2) In the event that a project does not meet one or more of the time frames outlined in (1) above, the Department shall:~~

~~(A) disencumber the remaining funds under the contract that are associated with that project, and~~

~~(B) apply a performance penalty to the next application for HOME funds a project submitted by the contractor in response to a NOFA having an application deadline after the missed project set up date or construction loan closing deadline/s pursuant to section 8212(d)(1)(A). shall be ineligible to receive any performance points.~~

~~(1) All projects shall be set up in C/MI the federal disbursement and information system no later than 18 17 months after the date of the award letter, and all construction loan closings shall occur no later than 24 20 months after the date of the award letter, with the exception of self-help projects, for which construction loan closings must occur no later than 30 23 months after the date of the award letter. Construction loan closing is defined as the recordation of all construction financing loan documents, including, as applicable, the HOME deed of trust and HOME regulatory agreement. All projects must be completed within 36 months of the date of the award letter, as evidenced by the filing of a Notice of Completion, and all expenditures must be made within 40 months of the date of the award letter. In the event that a project is not set up or closed within these time frames, the Department shall disencumber the remaining funds under the contract that are associated with that project, and the. If a project misses any of these deadlines, the next application for HOME funds a project submitted by the contractor in response to a NOFA having an application deadline after the missed project set up date or construction loan closing deadline shall be ineligible to receive any a performance points penalty.~~

(c) All programs Program Milestones

(1) Contractors that did not select the fast-track milestone schedule pursuant to Section 8212(c)(4) shall be subject to the following expenditure provisions calculated from the date the award to the contractor is announced by the department and based on the activity amount set forth in the contract.

~~(4A)~~ ~~25~~ ~~20~~ per cent of the activity amount expended by the end of the ~~15th~~-~~12th~~ month; ~~45~~ ~~60~~ ~~50~~ per cent expended by the end of the ~~24st~~ ~~18th~~ month; and ~~65~~ ~~95~~ per cent expended by the end of the ~~27th~~ ~~24th~~-~~30th~~ month; ~~85~~ per cent expended by the end of the ~~33rd~~ month; and ~~95~~ per cent expended by the end of the ~~39th~~ month (the “final milestone”).

(i) Funds expended for program administration shall not be considered in calculating expenditure milestones.

(ii) Program income funds expended on the same program activity specified in the Standard Agreement or as otherwise approved in writing by the Department will be used in the calculation of disbursements in determining if the milestones are met except for the final.

(iii) In the event that unexecuted standard agreements are not mailed to all program contractors within 90 days of the date of the award letter, the Department shall extend the expenditure milestones specified in this paragraph (1) by the total number of days between the 90th day and the date the last contract is mailed.

~~(2)~~ ~~If a program fails to meet one milestone, the amount for which the contractor would be eligible to apply when it submits its next application for a program shall be reduced by 15 percent.~~

~~(2)(3)(B)~~ If a program fails to meet any two successive milestones, the next application for HOME funds a program submitted by the contractor in response to a NOFA having an application deadline following the second milestone shall be ineligible to receive any a performance points penalty. ~~And the amount for which the contractor would be eligible to apply when it submits its next application for a program shall be reduced by 30 percent.~~

~~(3)(4)(C)~~ If a program fails to meet any all three (3) milestones: the contractor shall be ineligible to apply for HOME funds ~~made available~~ a program under the first NOFA having an application deadline following the third missed milestone for a program (the “milestone NOFA”); and the next application for HOME funds a program submitted by the contractor in response to a NOFA issued after the milestone NOFA, and accepted by the department, shall be ineligible to receive any a performance points penalty, ~~and the amount for which the contractor would be eligible to apply shall be reduced by 40 percent.~~

~~(4)(5)(D)~~ All unexpended funds remaining after the final milestone shall be disencumbered by the Department.

~~(d)(2)~~ Contractors that selected the fast-track milestone schedule pursuant to Section 8212(c)(4) that do not expend at least 95 percent of their activity amount within 18 months of the date of the award letter will be ineligible to apply for HOME funds made available under the first NOFA having an application deadline following the missed milestone, and the next application for a program submitted by the contractor shall be ineligible to choose the fast-track milestone schedule, and shall receive a performance penalty of double the amount of points that they received in the previous application for choosing the fast-track milestone schedule, as defined in Section 8212(c)(4).

~~(e)(3)~~ Notwithstanding anything to the contrary in this Section, contracts that were awarded HOME funds from a NOFA issued prior to 2004 shall be subject to the milestones that were in effect when their contracts were entered into. Contracts awarded HOME funds from a NOFA issued prior to 2003 that do not comply with milestone expenditure requirements are subject to the following performance penalties:

~~(1)(A)~~ If a program fails to meet two successive milestones, the next application for a program submitted by the contractor in response to a NOFA having an application deadline following the second milestone shall receive a performance penalty, and the amount for which the contractor would be eligible to apply when it submits its next application for a program shall be reduced by 30 percent.

~~(2)(B)~~ If a program fails to meet any three (3) milestones: the contractor shall be ineligible to apply for HOME funds for a program under the first NOFA having an application deadline following the third missed milestone, and the amount for which the contractor would be eligible to apply when it submits its next application for a program shall be reduced by 30 percent.

~~(4)~~ The State may provide an increase to the program funding limit based on an applicants prior HOME performance and criteria specified in the NOFA.

~~(d)~~ An exception to the program and project requirements of this section may be requested and provided at the Department's sole discretion when it is determined that violation was clearly outside of the control of the Contractor. This provision does not apply to Subsection 8217(b)(3)(A).

~~(d) Notwithstanding anything to the contrary in this section, those portions of contracts entered into in calendar years 1997, 1998 and 1999 involving programs shall be subject only to subsections (a) and (d) of this section.~~

~~(1) For program activities in contracts entered into during the 1997 and 1998 calendar years, a contractor may elect to be subject to subsection (a) of section 8217 as it was in effect at the time the contract was made, or the contractor may elect to be subject to the following provisions: Any funds not expended by the thirty ninth (39th) month following the date the award to the contractor was announced by the department shall be disencumbered by the department and if any funds are disencumbered, the next application for HOME funds submitted by the contractor in response to a NOFA with an application deadline following the 39 month expenditure deadline shall be ineligible to receive any performance points.~~

~~(2) For contracts entered into during the 1999 calendar year, the contractor may elect to be subject to subsection (a) of section 8217 as it was in effect at the time the contract was made, or the contractor may elect to be subject to all of the provisions of this section.~~

~~(3) For purposes of the contractor's election permitted by this subsection (d), the department shall assume that a contractor has elected NOT to be subject to subsection (a) of section 8217 as it was in effect at the time the contract was made unless the department receives notification otherwise in writing within 10 days of the effective date of these regulations.~~

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.
Reference: 24 CFR Sections 92.454(a)(2) and 92.500(d); and Sections 50896 and 50896.1, Health and Safety Code.

Repeal Section 8217.1 as follows:

~~Section 8217.1. Identification and Set-Up Deadlines for Contracts Numbered Prior to 1999~~

~~(a) All projects to which funds will be allocated must be identified by the State Recipient or CHDO no later than 12 months from the date awards are announced by the department. To identify projects, the State Recipient or CHDO shall submit to the department, at a minimum, a prospective name or address and estimated HOME funds. In the event the State Recipient or CHDO fails to identify specific projects within this time frame, the department shall reallocate uncommitted funds pursuant to section 8210(g) of this subchapter.~~

~~(b) All projects shall be set up in C/MI no later than the date contained in the standard agreement. In the event the State Recipient or CHDO fails to set up projects within this time frame, the department shall disencumber remaining funds.~~

~~(c) This section only shall apply to those contractors that elect to be bound by its provisions pursuant to paragraph (d) (3) of section 8217.~~

~~Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.
Reference: 24 CFR Sections 92.454(a)(2) and 92.500(d); and Sections 50896 and 50896.1, Health and Safety Code.~~

Repeal Section 8219 as follows:

~~8219. State Recipient Administration of CHDO Local Programs~~

~~(a) If a CHDO requests that a city or county administer its local program as a State Recipient, the department shall evaluate the capability of the jurisdiction pursuant to section 8204(a)(1) and (a)(3). If the CHDO is requesting a State Recipient to administer the CHDO's local program pursuant to subsection (b)(1), the request shall be made at the time of application to the department. If the a CHDO is requesting requests a State Recipient to collect HOME repayments pursuant to subsection (b)(2), the request may be made at any time. A city or county shall be eligible to administer a CHDO's local program as a State Recipient under the following conditions:~~

~~(1) In the case of administration by a city, the CHDO's local program is located within the corporate boundaries of the city and, in the case of administration by a county, the CHDO's local program is located anywhere within the county's boundaries, which may include being located within an incorporated city.~~

~~(2) The city or county is eligible pursuant to 8210(a); and~~

~~(3) The city or county has a housing element in substantive compliance, if only receiving repayments pursuant to subsection (b)(2).~~

~~(b) If the State Recipient is eligible pursuant to subsection (a), the State Recipient shall be responsible for either of the following:~~

~~(1) administering the CHDO's local program on behalf of the department, including collecting HOME repayments to the State Recipient's local account for reuse for eligible HOME activities; or~~

~~(2) —collecting HOME repayments to the State Recipient's local account for reuse for eligible HOME activities.~~

~~(c) —Prior to the administration of the local program of a CHDO, the department shall enter into an agreement with the State Recipient which describes the responsibilities of the State Recipient.~~

~~NOTE: Authority cited: section 50406, Health and Safety Code.~~

~~Reference: 24 CFR sections 92.201 and 92.502.~~